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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/757,168	01/13/2004	Basia Kaminski	1510-4	3560

7590 04/19/2006

JOHN MAIER, III
666 AARON COURT
KINGSTON, NY 12401

EXAMINER

VAKILI, ZOHREH

ART UNIT	PAPER NUMBER
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1614

DATE MAILED: 04/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/757,168	Applicant(s) KAMINSKI, BASIA	
	Examiner Zohreh Vakili	Art Unit 1614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Status of Action

Claims 1-20 are pending.

Claims 1-20 are rejected.

Claim Rejections - 35 USC § 112

Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

"The primary purpose of this requirement of definiteness of claim language is to ensure that the scope of the claim is clear so the public is informed of the boundaries of what constitutes infringement of the patent. A secondary purpose is to provide a clear measure of what applicants regard as the invention so that it can be determined whether the claimed invention meets all the criteria for patentability and whether the specification meets the criteria of 35 U.S.C. 112, first paragraph with respect to the claimed invention." (MPEP 2173). The term "semi-hard" in claims 1-20 is a relative term which renders the claim indefinite. The term "semi-hard" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. In other words, the phrase semi-hard can be interpreted as alternative levels of hardness depending on the interpreter's perception.

Similarly, claims 11-20 are indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention to the extent

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that the term "by weight percent" in claims 11-20 is a relative term which renders the claim indefinite. In other words, "by weight percent" can be interpreted as weight percent of the entire formulation or by weight percent of a dry formulation or aqueous for example. But, for purposes of examination the claim limitation will be interpreted as a range of weight per weight of the composition.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-20 rejected under 35 U.S.C. 103(a) as being unpatentable over Vermeer (US 5624906) taken with Barry et al (US 6365130).

Vermeer teaches dentifrices (column 2) with improved foam, viscosity, clarity and good taste (see the abstract) comprising sodium benzoate in an amount of from 0-5% (in claims 1-20; see col 36 lines 25-30), sodium bicarbonate present in amounts generally from 0-65% (see col 17 lines 55-60) but more specifically present in an amount of 0.5 and 1.0% in Example 104 col 87, calcium carbonate present in an amount of 0-65% (see col 17 lines 55-60), coconut fatty acid (absent facts to the contrary) is a potassium (among others) salt of coconut fatty acids, i. e., potassium cocoate (see X which teaches that it is known to use potassium cocoate in toothpaste),

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and sodium lauryl sulfate present in an amount of 1-5.4% as shown in Examples 109-115 col 89 as well as coconut derivative surfactants such as 3-(cocodimethylsulfonio)-1-propane sulfonate and the cocoamide DEA of Example 86 col 71 which are known to have the same functional properties as coco-sulfates, stearyl alcohol known as octadecanol and titanium dioxide both of which are present in an amount from 0-5% (claim 18; see col 40 lines 32-55), ammoniated glycyrrhizin (claim 18; col 37 line 36) and binders and cothickeners present in the amount of 0-30% which are functional equivalents to aluminum starch octenylsuccinate (claim 18; see col 18 lines 44-end). The dentifrices also contain foam forming agents (e. g., column 3) abrasive/polishing agents (column 17) which absent factual evidence to the contrary are also cleansers (e. g., sodium bicarbonate, see column 17, lines 55-60); glycerin used to add body to a mouthwash or dental rinse composition and retain moisture in a dentifrice composition, humectants at columns 17-18 (water absorption materials); soaps and particularly the sodium, calcium, and potassium salts of fatty acids include stearic acid (e. g., sodium stearate) at column 19 which is the same sodium stearate the claims refer to as tensile strength promoting vegetal-based sodium stearate; and coconut fatty acid (absent facts to the contrary) is a potassium (among others) salt of coconut fatty acids, i. e., potassium cocoate (see Vermeer which teaches that it is known to use potassium cocoate in toothpaste), In addition Vermeer teaches anionic surfactants (see at least column 21+) where sodium coconut monoethanolamide ether sulfate is disclosed (absent fact to contrary, it would have been the same as the recited sodium coconut-sulfate). Furthermore, column 41 teaches using sodium benzoate among others as an

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antimicrobial in the composition. Also added into the composition are flavorants (column 36-37); colorants (column 38); hydrolyzed wheat gluten (column 40); and whiteners (column 90, example 110). Vermeer further introduces examples of alkali metal halides (salts) useful in this invention include sodium chloride, potassium chloride, etc. Preferred alkali metal halides are sodium chloride. Sodium chloride and sea salt which sodium and chloride subsequently became the most abundant constituents of sea salt, serve as an electrolyte and contributes to the overall flavor (col. 36, line 50).

Vermeer does not recite a dentifrice comprising wax.

Barry et al. teaches dentifrices comprising wax, such as beeswax (claim 18; see col 8 line 32).

One of ordinary skill in the art would have been motivated to combine Vermeer with Barry et al. and as combined teach and suggest the invention as claimed. One of ordinary skill in the art would have been motivated to combine Vermeer with Barry et al. because both are directed to dental compositions. Moreover, Barry et al. cite Vermeer as a reference. Thus the claimed invention was within the ordinary skill in the art to make and use at the time the claimed invention was made and was as a whole, *prima facie* obvious.

Conclusion

No claim is allowed.

Any inquiry concerning this communication should be directed to Zohreh Vakili, telephone number 571-272-3099. The examiner can normally be reached from 8:30 a.m. to 6:00 p.m., Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Low can be reached at 571-272-0951. The fax number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic business Center (EBC) at 866-217-9197 (toll-free). Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zohreh Vakili whose telephone number is 571-272-3099. The examiner can normally be reached on 8:30-5:00 Mon.-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Low can be reached on 571-272. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Examiner
Zohreh Vakili
Art Unit 1614

April 14, 2006


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